

**RULES
OF
DEPARTMENT OF REVENUE
INCOME TAX DIVISION**

**CHAPTER 560-7-8
RETURNS AND COLLECTIONS**

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560-7-8-.64 Railroad Track Maintenance Tax Credit.

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(1) **Purpose.** This regulation provides guidance concerning the implementation and administration of the income tax credit under O.C.G.A. § 48-7-40.34.

(2) **Definitions.**

(a) The term "Class III railroad" means a rail carrier classified as a Class III railroad by the United States Surface Transportation Board in accordance with Section 1-1 of 49 C.F.R. 1201, as it existed on January 1, 2018.

(b) The term "qualified railroad track maintenance expenditures" means gross expenditures for maintaining railroad track located in Georgia, including roadbed, bridges, and related track structures located in Georgia, owned or leased as of January 1, 2018, by a Class III railroad. Such term shall also include improvement of such railroad track, roadbed, bridges, and related track structures.

(3) **Credit Amount.** For tax years beginning on or after January 1, 2019, and ending on or before December 31, 2026, a Class III railroad shall be allowed a tax credit in the amount of 50 percent of the qualified railroad track maintenance expenditures paid or incurred by such Class III railroad during the taxable year.

(4) **Credit Amount Limitation.** The credit amount allowed under paragraph (3) of this regulation shall be further limited for each Class III railroad and shall not exceed \$3,500 multiplied by each mile of railroad track owned or leased in Georgia as of the close of the taxable year by such Class III railroad. Double track is treated as multiple lines of railroad track, rather than as a single line of railroad track. Thus, one mile of single track is one mile, but one mile of double track is two miles.

(5) **Per Mile Limitation.** The credit allowed under O.C.G.A. § 48-7-40.34 and this regulation shall only be allowed once for each mile of railroad track in each taxable year.

(6) **Reduction of basis.** If a credit is allowed under O.C.G.A. § 48-7-40.34 and this regulation with respect to any railroad track, the basis of such railroad track shall be reduced by the amount of the credit allowed. Such reduction shall be treated in the same manner as provided by Section 45G of the Internal Revenue Code of 1986.

(7) **Preapproval.** A taxpayer seeking preapproval to claim the tax credit under O.C.G.A. § 48-7-40.34 must electronically submit Form IT-RTM-AP through the Georgia Tax Center along with documentation that substantiates the miles of railroad track owned or leased by the taxpayer in Georgia, and any other information that the Commissioner may request. The Department will not preapprove any taxpayer where Form IT-RTM-AP is submitted or

filed in any other manner. If the taxpayer is a disregarded entity then Form IT-RTM-AP should be electronically submitted in the name of the owner of the disregarded entity. If Form IT-RTM-AP is submitted before the credit is earned or before the end of the taxpayer's tax year, the taxpayer must estimate their credit amounts on Form IT-RTM-AP. The amount of tax credit claimed on the taxpayer's applicable Georgia income tax return must be based on the actual amount of qualified railroad track maintenance expenditures. If the taxpayer is preapproved for an amount that exceeds the amount that is calculated using the actual amount of the qualified railroad track maintenance expenditures when the return is filed, the excess preapproved amount cannot be claimed by the taxpayer, nor shall the excess preapproved amount be claimed by, reallocated to, assigned to, or transferred or sold to any other taxpayer.

(a) Notification. The Department will notify each taxpayer of the tax credits preapproved to such taxpayer, within thirty (30) days from the date the completed Form IT-RTM-AP was submitted through the Georgia Tax Center.

(8) Claiming the Credit. To claim the railroad track maintenance tax credit, the taxpayer must submit Form IT-RTM, and any other information that the Commissioner may request, with the taxpayer's Georgia income tax return each year the tax credit is claimed. A software program's Form IT-RTM that is electronically filed with the Georgia income tax return in the manner specified by the Department satisfies this requirement.

(9) No Carry forward. No unused railroad track maintenance tax credit shall be allowed the taxpayer or the transferee against succeeding years' tax liability.

(10) **Pass-Through Entities.** When the taxpayer is a pass-through entity, and has no income tax liability of its own, the tax credits will pass to its members, shareholders, or partners based on the year ending profit/loss percentage and the limitations of this regulation. The credit forms will initially be filed with the tax return of the taxpayer to establish the amount of the credit available for pass through. The credit will then pass through to its shareholders, members, or partners to be applied against the tax liability on their income tax returns. The credits are available for use as a credit by the shareholders, members, or partners for their tax year in which the income tax year of the pass-through entity ends. For example: A partnership earns the credit for its tax year ending January 31, 2020. The partnership passes the credit to a calendar year partner. The credit is available for use by the individual partner beginning with the calendar 2020 tax year.

(11) **Selling or Transferring the Railroad Track Maintenance Tax Credit.** The taxpayer may sell or transfer in whole or in part any railroad track maintenance tax credit previously claimed but not used by such taxpayer against its income tax, to another Georgia taxpayer subject to the following conditions:

(a) The taxpayer may only make a one-time sale or transfer of railroad track maintenance tax credits earned in each taxable year. However, the sale or transfer may involve more than one transferee. For example, taxpayer 1 earns and claims \$100,000 credit in year 1. In year 2 they sell \$75,000 of the credit to taxpayer 2. In year 3, they are allowed to sell the remaining \$25,000 of the credit to taxpayer 3. However, both taxpayer 2 and taxpayer 3 are not allowed to resell the credit since the credit can only be sold one-time.

(b) The railroad track maintenance tax credit may be transferred before the tax return is filed by the taxpayer provided the taxpayer has received preapproval from the Department as provided in paragraph (7) of this regulation.

(c) The taxpayer must file Form IT-TRANS “Notice of Tax Credit Transfer” with the Department of Revenue within 30 days of the transfer or sale of the railroad track maintenance tax credit. Form IT-TRANS must be submitted electronically to the Department of Revenue through the Georgia Tax Center or alternatively as provided in subparagraph (11)(c)1. of this regulation. With respect to such taxpayer, the Department of Revenue will not process any Form IT-TRANS submitted or filed in any other manner. If the taxpayer is a disregarded entity then Form IT-TRANS should be filed in the name of the owner of the disregarded entity.

1. The web-based portal on the Georgia Tax Center. The taxpayer may provide selective information to a representative for the purpose of allowing the representative to submit Form IT-TRANS on their behalf on the Georgia Tax Center outside of a login. The provision of such information shall authorize the representative to submit such Form IT-TRANS. The representative must provide all information required by the web-based portal on the Georgia Tax Center to submit Form IT-TRANS.

(d) The taxpayer must provide all required railroad track maintenance tax credit detail and transfer information to the Department of Revenue. Failure to do so will result in the railroad track maintenance tax credit being disallowed until the taxpayer complies with such requirements.

(e) The carry forward period of the railroad track maintenance tax credit for the transferee will be the same as it was for the taxpayer. No unused railroad track maintenance tax credit shall be allowed to be carried forward.

1. Example. Taxpayer sells the railroad track maintenance tax credit on June 15, 2020. This credit is for qualified railroad track maintenance expenditures preapproved by the Department for 2019, paid or incurred in 2019 and claimed by the taxpayer on their 2019 income tax return. The transferee is a calendar year taxpayer. The credit may be claimed by the transferee on the calendar 2019 tax year return. The credit cannot be carried forward by the taxpayer or the transferee. The credit can only be utilized in tax year 2019.

(f) A transferee shall only have such rights to claim and use the railroad track maintenance tax credit that were available to the taxpayer at the time of the transfer. Thus, a transferee shall not have the right to subsequently transfer such credit since that right has been utilized by the transferor.

(g) In the event of recapture, reduction, disallowance, or other failure related to the railroad track maintenance tax credit, the Department may pursue the taxpayer or the transferee.

(12) How to Sell or Transfer the Railroad Track Maintenance Tax Credit. The taxpayer may sell or transfer the railroad track maintenance tax credit directly to a Georgia taxpayer (or multiple Georgia taxpayers as provided in subparagraph (11)(a) of this regulation). A pass-through entity may make an election to sell the railroad track maintenance tax credit preapproved in a taxable year at the entity level. If the pass-through entity makes the election to sell the railroad track maintenance tax credit at the

entity level, the credit does not pass through to the shareholders, members, or partners. In all cases, the effect of the sale of the credit on the income of the seller and buyer of the credit will be the same as provided in the Internal Revenue Code.

(a) **Pass-Through Entity.** The taxpayer may be structured as a pass-through entity. If a pass-through entity does not make the election to sell or transfer the tax credit at the entity level as provided in paragraph (12) of this regulation, the tax credit will pass through to the shareholders, partners, or members of the entity based on their year ending profit/loss percentage. The shareholders, members, or partners may then sell their respective railroad track maintenance tax credit to a Georgia taxpayer.

(b) **Transferee Pass-Through Entity.** The taxpayer or its shareholders, members, or partners, may sell or transfer the tax credit to a pass-through entity. If the pass-through entity has no income tax liability of its own, the pass-through entity may then pass the credit through to its shareholders, members, or partners based on the pass-through entity's year ending profit/loss percentage for the year. For example, if a calendar year partnership is buying the credit preapproved by the Department for 2019, then all of the partners receiving the credit must have been a partner in the partnership no later than the end of the 2019 tax year of the partnership. Only partners who have a profit/loss percentage as of the end of the applicable tax year may receive their respective amount of the railroad track maintenance tax credit. The credits are available for use as a credit by the shareholders, members, or partners for their tax year in which the income tax year of the pass-through entity ends. For example, a taxpayer received preapproval from the Department for 2019, incurred qualified railroad track maintenance expenditures in 2019, and sells the credit to a pass-through entity. The pass-through entity is entitled to use the

credits on its calendar year 2019 tax return. The pass-through entity has two partners. The first partner is a calendar year partner. This credit can only be utilized on the calendar tax year 2019 return and cannot be carried forward by the partner. The second partner is a corporation with fiscal year ending June 30, 2020. This credit can only be utilized on the fiscal year ending June 30, 2020, return and cannot be carried forward by the partner.

(c) The credits are available for use by the transferee, provided the time has not expired for filing a claim for refund of a tax or fee erroneously or illegally assessed and collected under O.C.G.A. § 48-2-35 in the transferee's tax year in which the income tax year of the taxpayer which claims the railroad track maintenance tax credit associated with the credit being sold, ends.

1. Example. Taxpayer sells the railroad track maintenance tax credit on October 15, 2019. This credit is for qualified railroad track maintenance expenditures preapproved by the Department for 2019, incurred in 2019 and claimed by the taxpayer on their 2019 income tax return. The transferee is a calendar year taxpayer. The credit may be claimed by the transferee on the calendar 2019 tax year return. This credit cannot be carried forward by the taxpayer or the transferee. The credit can only be utilized in tax year 2019 but can be claimed on an amended tax year 2019 return within the time period provided in subparagraph (c) of this paragraph.

(13) **Report.** On or before September 1, 2020, 2021, 2022, 2023, 2024, 2025, 2026, and 2027 the Department shall issue a report to the chairpersons of the Senate Finance Committee and the House Committee on Ways and Means, which shall include the following statistics for the preceding taxable year:

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- (a) The total number of taxpayers that claimed a credit; and
- (b) The number and total value of all credits earned and all credits applied during such tax year.

(14) **Sunset Date.** O.C.G.A. § 48-7-40.34, the railroad track maintenance tax credit, shall be repealed on January 1, 2027.

(15) **Effective Date.** This regulation shall be applicable to taxable years beginning on or after January 1, 2019.

Authority: O.C.G.A. §§ 48-2-12 and 48-7-40.34.